

Labour  
Canada

Travail  
Canada

# AMENDMENTS

## TO THE

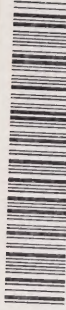
# CANADA LABOUR CODE

## PART III

# LABOUR STANDARDS

Canada

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**Amendments  
to the  
*Canada Labour Code*  
Part III**

**Labour Standards**

# Outline of Session



Purpose

Modification of Permits

Collective Agreements

Maternity-Related  
Reassignment

Parental Leave

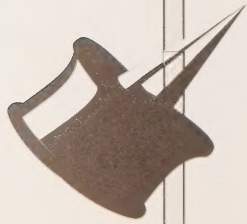
Injured Workers

Wage Recovery

## NOTES



# Purpose



The purpose of this handout and the accompanying overheads is to outline the amendments to the *Canada Labour Code*, Part III. The amendments were developed in consultation with employer and employee representatives. These partners in the world of work agree that these amendments will improve efficiency and strengthen the co-operative relationships between employers and employees. The changes will streamline business and government operations, removing unnecessary administrative cost burdens while providing for an improved balance between employer and employee rights.

This material is intended to be used as a training tool with employers within the federal jurisdiction. This is not a comprehensive package on Part III of the Code, but merely an overview of the recent amendments.

## TO AMEND THE CANADA LABOUR CODE, PART III

- ☐ Fairness and Equity
- ☐ Co-operative Relationships
- ☐ Streamline Procedures

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## NOTES

# Process to Modify Hours of Work, Annual Vacation or General Holidays



## Purpose

To streamline the procedures for ministerial permits needed to modify hours of work, annual vacation or general holidays.

There are two types of modifications of labour standards:

- modifications with employee concurrence
- employer-initiated modifications for operational necessity

## Modifications with Employee Concurrence

### See Figure D(a).

In the case of modifications 1 to 4, the previous requirement to notify or seek approval or obtain a permit from Labour Canada is removed where the modification meets existing criteria in Part III and where there is concurrence between the employer and,

- 70 percent of the affected employees, or
- the bargaining agent where the modification is made by or pursuant to a collective agreement.

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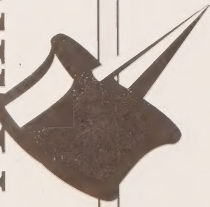
## Process to Modify

Figure D(a)

Hours of Work, General Holidays and Annual Vacation

Modifications with Employee Concurrence	Old	New
1 modified work week	ministerial permit	concurrence between employer and bargaining agent or concurrence between employer and 70 percent of affected employees
2 maximum hours in modified work week	ministerial permit	
3 cancellation of modified work week in unionized undertakings	ministerial permit	
4 substitution of general holidays	notice to Minister in unionized undertakings or ministerial approval	
5 waiver of annual vacation	authorization by Regional Director	concurrence between employer and employee
6 postponement of annual vacation	notice to Regional Director	concurrence between employer and employee

# Process to Modify Hours of Work, Annual Vacation or General Holidays



In the case of the waiver or postponement of annual vacation (modifications 5 and 6), there must be agreement between the employer and the employee.

## Employer-Initiated Modifications for Operational Necessity

See Figure D(b).

In the case of modifications 7 to 11, the previous requirement to notify or seek approval from Labour Canada is removed where there is concurrence between the employer and the bargaining unit or where the Regional Director of Labour Canada is notified (as well as the bargaining agent in a unionized undertaking).

*Continued...*

Figure D(b)

Employer-initiated Modifications for Operational Necessity	Old	New
7 averaging plan of 13 weeks or less	notice to Regional Director	
8 averaging plan longer than 13 weeks	notice and justify to Regional Director	concurrence between employer and bargaining unit
9 alteration of averaging plan	notice to Regional Director	or notice to Regional Director
10 cancellation of averaging plan	notice to Regional Director	(and to the bargaining agent in a unionized undertaking)
11 cancellation of modified work week in non-unionized undertakings	notice to Minister	

# Process to Modify Hours of Work, Annual Vacation or General Holidays



For excess hours, (modification 12), a ministerial permit and report to the Minister (and notice to the bargaining agent in a unionized undertaking).

For emergency hours, (modification 13), notice must be given to the Regional Director (and to the bargaining agent in a unionized undertaking).

For modification 14, simply a notice from the employer to the affected employee(s).

Modifications that are implemented in non-unionized establishments will be valid for up to three years, at which time they must be reviewed:

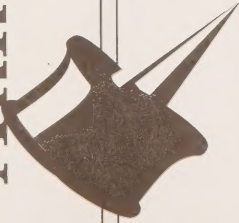
- by the parties in the workplace in the case of modifications made with employee concurrence, or
- by the Regional Director in the case of employer-initiated modifications.

*Continued...*

Figure D(c)

Employer-initiated Modifications for Operational Necessity	Old	New
12 excess hours	ministerial permit and report	ministerial permit and report to Minister (and notice to the bargaining agent in a unionized undertaking)
13 emergency hours	report to Minister	report to Regional Director (and to the bargaining agent in a unionized undertaking)
14 employment year for purposes of annual vacation	ministerial approval	notice from employer to affected employee(s)

# Process to Modify Hours of Work, Annual Vacation or General Holidays



Modifications that are not reviewed after three years will be invalid.

Modifications which are addressed in a **collective agreement** will subsist for the **life of the collective agreement**, at which time they could be reviewed by the collective bargaining parties. Modifications made in unionized undertakings at the initiation of the employer will be valid for three years, at which time they could be reviewed by the Regional Director. Modifications in a unionized undertaking that are not addressed in a collective agreement or not reviewed after three years will be invalid.

## NOTES

# Part III and Collective Agreements



## Definition

Collective Agreement means an **agreement in writing** containing **terms or conditions of employment** between an employer and a trade union, including provisions with reference to rates of pay, hours of work, and providing for **settlement of disagreements** by a third party.

## Purpose

To recognize the application of collective agreements as they pertain to certain labour standards.

The administration of a collective agreement will prevail when:

- its terms meet or exceed **any** of the four individual standards (minimum wage, annual vacation, general holidays, bereavement leave), and
- members of the bargaining unit have access to a third-party grievance procedure to redress complaints on these four standards.

The collective agreement must meet or exceed the legislated provisions for the amount of leave, minimum wage, and qualifying period for each of these four individual standards.

☐ Definition

☐ Exclusions

☐ Minimum Wage

☐ Annual Vacation

☐ General Holidays

☐ Bereavement Leave

☐ All Other -

*Canada Labour Code*

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## NOTES

# Maternity-Related Reassignment



## Purpose

To provide employees who are pregnant or nursing with the right to request job modification or reassignment.

## Rights and Obligations

- employee must submit a certificate from her physician stating that, due to her pregnant or nursing condition, certain activities may pose a risk to her, the fetus or nursing child;
- job modification or reassignment will be implemented only for the duration of the potential risk if it is **reasonably practicable** to do so;
- the right to reassignment or leave will end 24 weeks after the birth. This encompasses the usual period of nursing.

*Continued...*

☐

Purpose

☐

No Qualifying Period

☐

Right to Request Job Modification or Reassignment

☐

Rights and Obligations

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## NOTES

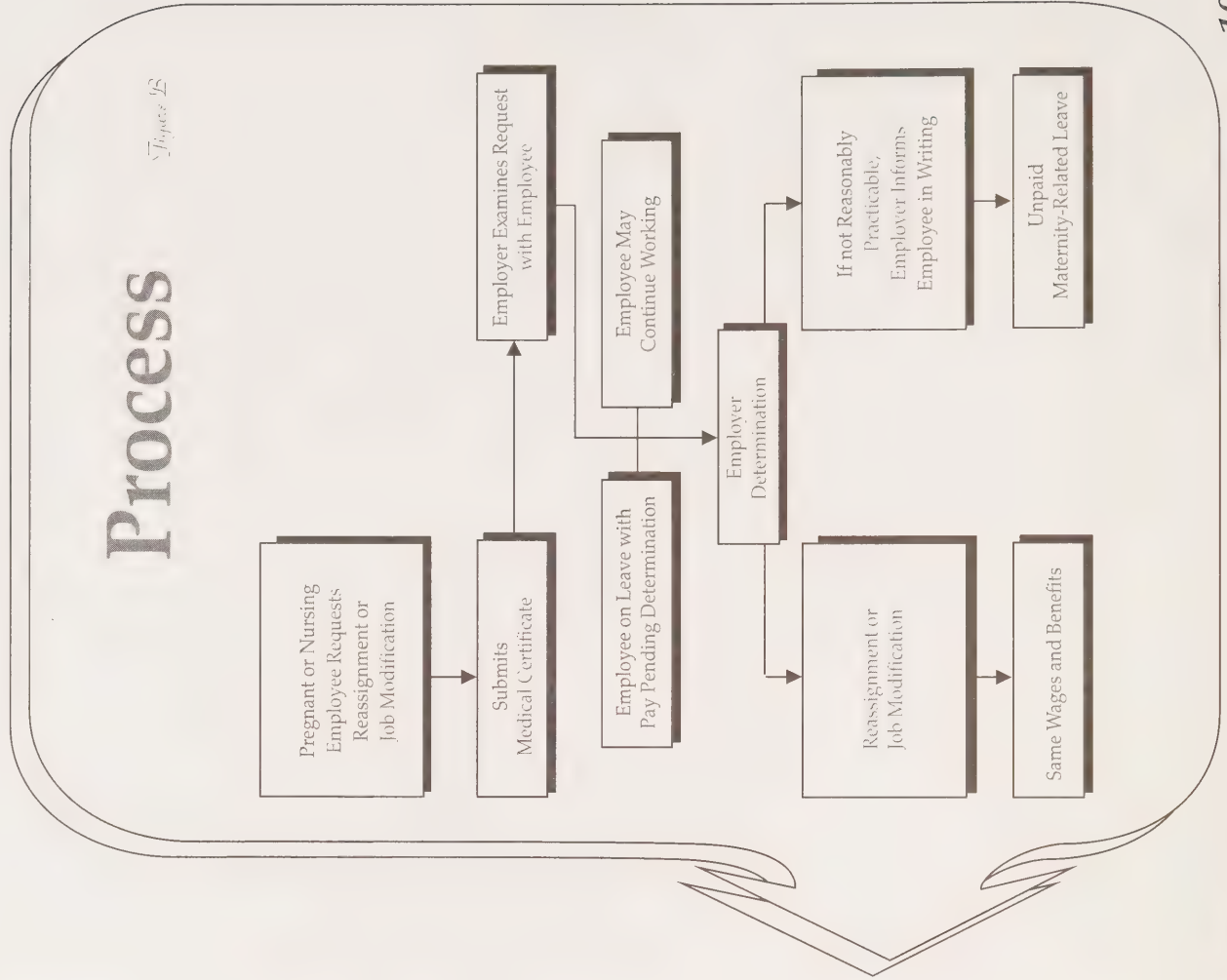
# Maternity-Related Reassignment



Qualifying Period

None.

For process see Figure B.



# Parental Leave



## Purpose

To create greater flexibility regarding the time during which the leave may be taken.

## Timing of Leave

- the Canada Labour Code provides 24 weeks of parental leave;
- natural or adoptive parents can now each take one period of parental leave (aggregate amount not to exceed 24 weeks) anytime within the 52 weeks following the child's birth or its coming into the parent's care and custody;
- parental leave must be taken in one block;
- a natural mother will not be required to take her parental leave contiguous with her maternity leave;
- the Canada Labour Code does not prevent the overlap of all or part of the parents' leave periods.

- ☐ More Flexibility
- ☐ Length of Time
- ☐ Interaction of Maternity and Parental Leave

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## NOTES

# Parental Leave

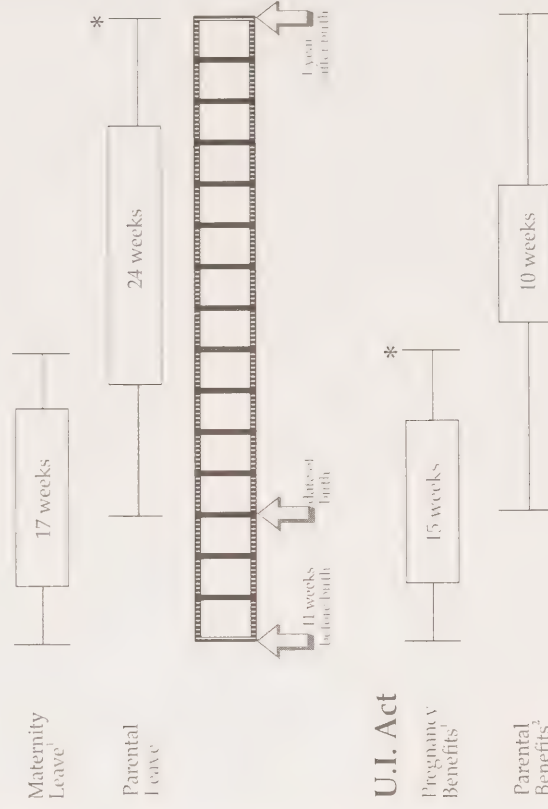


The interaction of Maternity and Parental Leave as well as the interaction of the Canada Labour Code and the U.I. Act is illustrated in **Figure A(a).**

- 1 The mother may take her 17 weeks of maternity-related leave anytime within 11 weeks prior to the estimated date of confinement and 17 weeks following the actual date of confinement.

*Continued...*

## Canada Labour Code Natural Parents



### Key

- 1 = available for mothers only
- 2 = available for both parents, to share as parents see fit
- = earliest start date — latest finish date.
- = duration of leave or benefits
- \* = some exceptions apply where child is hospitalized

Figure A: Interaction of Maternity and Parental Leave (Canada Labour Code) Pregnancy and Parental Benefits (U.I. Act) for Natural Parents

# Parental Leave

- 2 The 24 weeks of parental leave may be taken anytime within the 52 week period beginning on the day the child is born or the day the child comes into the employee's care.

The aggregate amount of leave of absence that may be taken by two employees in respect of the birth or adoption of a child shall not exceed 24 weeks.

## Canada Labour Code Adoptive Parents

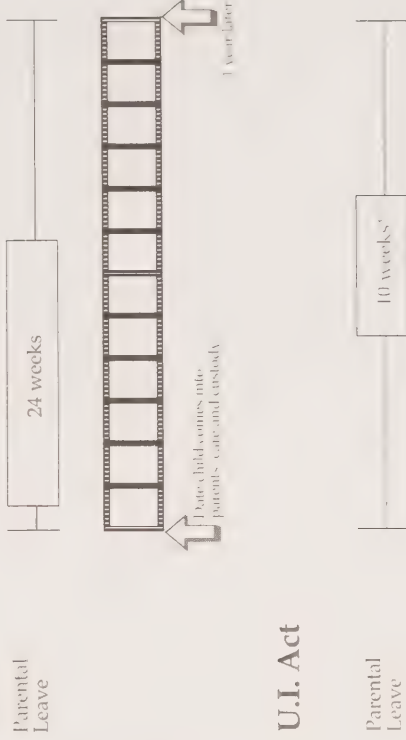


Figure B: Interaction of Parental Leave (Canada Labour Code) and Parental Benefits (U.I. Act) for Adoptive Parents

# Injured Worker Wage and Employment Protection



## Purpose

All employers in the federal jurisdiction must subscribe to a wage replacement scheme. This wage replacement is payable at an equivalent rate to that provided for under the applicable workers' compensation legislation in the employee's province of permanent residence.

## Prohibition

Existing prohibitions are maintained.

*Continued...*

Provide standards for workers injured on the job, through

- ☐ Wage replacement
- ☐ Benefit accumulation
- ☐ Return to work

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## NOTES


# Injured Worker Wage and Employment Protection



## Protection

The standard wage replacement provided to an injured worker is equal to the rate prescribed by the workers' compensation program in the injured employee's province or territory of permanent residence.

Claims continue to be administered by the program to which the employer subscribes (e.g., provincial workers' compensation or private plan).

The standards include **regulation-making authority** to address details of administration, such as time limits and procedures when there are lay-offs or terminations at the workplace.

## NOTES

# Wage Recovery



## Purpose

To streamline the procedures for the collection of the employee's unpaid wages or other amounts owing.

## Main Features

The **administrative wage recovery system** effectively replaces criminal prosecution and referral to Small Claims Court. Inspectors will continue to follow the voluntary compliance policy. They will investigate to determine if a complaint is founded and if so, attempt to have the employer pay the wages or other amounts owing. However, in cases of non-payment:

- 1 **Inspectors have the power** to issue a written Payment Order to an employer or director who fails to pay wages or other amounts owing under Part III. A copy of the order must be given to the employee(s).

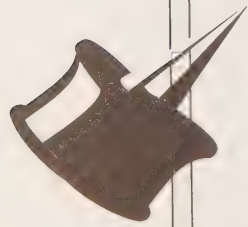
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- ☐ Improve Collection
- ☐ Inspectors' Powers
- ☐ Appeals and Procedures
- ☐ Third-Party Claim
- ☐ Directors' Liability

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## NOTES

# Wage Recovery



- 2 Appeals from an inspector's Order can be made to the Minister. The appeal must be made within 15 days of the Payment Order being issued or the inspector notifying that the complaint was unfounded. The Minister will appoint a referee from a designated list on a case-by-case basis. Payment of the amount of the Order will have to be made to the Receiver General in trust as a prerequisite of an employer's appeal. If the appeal is successful, the money will be returned to the employer. A referee hearing an appeal has the power to award costs.

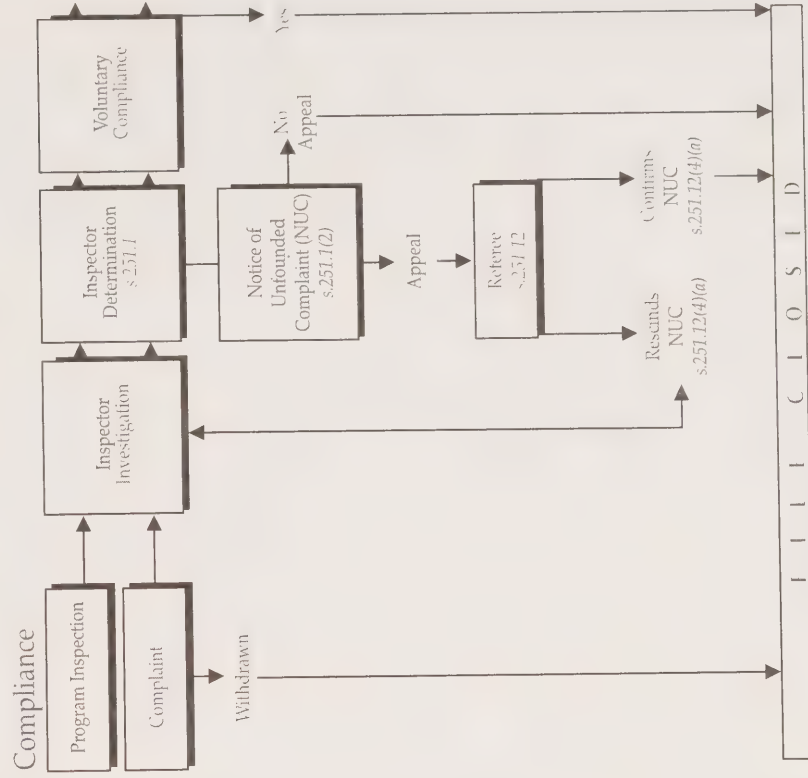
The order of the referee or, if there is no appeal, the payment order of the inspector may be registered in Federal Court and proceedings taken as a Court judgement.

## Third-Party Claim Procedure

The purpose of this procedure is to enable Labour Canada to take enforcement action when necessary, to ensure collection of a Payment Order. A third-party claim is made against a debtor of an employer, up to the amount stated in the payment order. The debtor is required to pay the amount to the Receiver General in trust

*Continued...*

## Wage Recovery Procedure The Canada Labour Code, Part III



# Wage Recovery

within 15 days. If not honoured, the claim could be registered in Federal Court and enforced as an Order of that Court. The issuance of a written payment order may be made by a Regional Director of Labour Canada.

## Directors' Liability

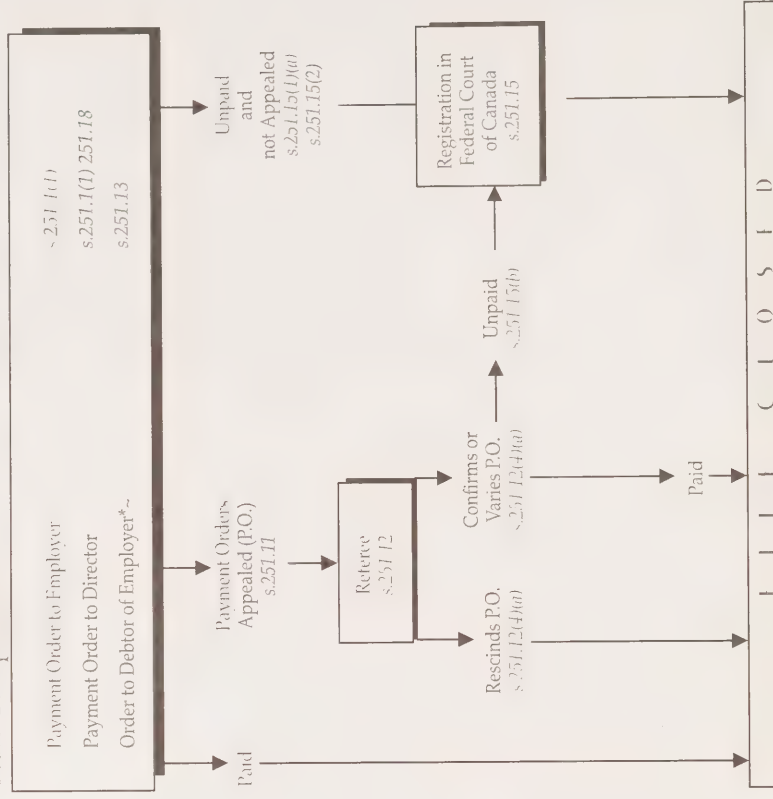
When Recovery from the Corporation is impossible or unlikely, this measure may be used. Corporate directors are **jointly and severally liable** for employee's wages and other amounts (e.g. severance and termination pay) to which an employee is entitled **during the director's incumbency, up to a limit equivalent to six months wages.**

See figure C(a) and (b) for wage recovery procedure.

## Wage Recovery Procedure Figure 2(b)

### The Canada Labour Code, Part III

#### Non-Compliance



\*~ The order to the debtor of the employer can only be issued by the Regional Director and cannot be appealed to the referee.



The publication was developed by Labour Canada prior to the restructuring of the Federal Government announced by Prime Minister Kim Campbell on June 25, 1993. Under the restructuring, the programs administered by Labour Canada become part of the Human Resources and Labour portfolio.

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